BRIEF IN SUPPORT OF PETITION.

OPINIONS BELOW.

The opinion of the District Court was written by District Judge Adrian J. Caillouet, and filed December 27th, 1941. It appears on page 66 of the record and is reported in 42 F. Supp. 528. The opinion of the Circuit Court of Appeals (Circuit Judges Hutcheson, Holmes and McCord, Judge Hutcheson writing) was filed February 10th, 1943, and appears at page 80 of the Record. It is reported in .... F. (2d) .....

JURISDICTION.

The jurisdiction of this court is invoked under section 240(a) of the Judicial Code as amended by the act of June 7, 1934, c. 426 (48 Stat. 926 [28 USCA Sec. 347 a]). The judgment of the Circuit Court of Appeals was entered on February 10th, 1943 (R. 85). Petition for rehearing was denied on March 12th, 1943 (R. 90). Extension of thirty days for filing petition for *certiorari* was granted by Mr. Justice Holmes on March 18th, 1943 (R. 92).

THE FACTS.

The facts are stated in the petition at page 1. We emphasize the fact that the appeal petitioners sought to

dismiss was taken by the Deputy Commissioner alone, after the claimant, by abandoning and withdrawing the claim, had acquiesced in the judgment of the District Court reversing and setting aside his order awarding compensation.

ARGUMENT.

I.

The Deputy Commissioner Had No Standing As Appellant In This Cause.

The Employees' Compensation Commission is an administrative agency created by the Act of Sept. 7, 1916, c. 458 Sec. 28 (39 Stat. 748 [5 USCA Sec. 778]) to which the administration of the Longshoremen's and Harbor Workers' Compensation Act has been intrusted. Under the Act, all claims for compensation must be filed by the party claimant with the deputy commissioner within a prescribed time and the commissioner is given full power and authority to hear and determine all questions in respect of such claims. Within ten days after the claim is filed, the deputy commissioner must give notice to all parties in interest and make such investigations with respect to the claim as he deems necessary and, upon application of any party in interest, a hearing is ordered after giving the claimant and other interested parties sufficient notice thereof. *(Sec. 19 of the Act [33 USCA Sec. 919]).*

Compensation orders become effective when filed, and unless proceedings are instituted to suspend or to set

them aside by either party, they become final within a prescribed time. *(Sec. 21 (a) [33 USCA Sec. 921 (a)]).* After the award has become final, and the employer defaults in the payment of a compensation award, the person to whom such compensation is payable may make application to the deputy commissioner for a supplementary order declaring the amount in default, but such order can only be made after investigation, notice and hearing as in the case of claims. The claimant may then file this supplementary order with the Federal District Court having jurisdiction, whereupon the court enters judgment for the amount declared in default. Review of this judgment may be had as in civil suits for damages at common law, and final proceedings to execute the same may be had by writ of execution *(Sec. 18 of the Act [33 USCA Sec. 918]).*

The act further provides that if a compensation order is not in accordance with law, it may be suspended or set aside through injunction proceedings brought by any party in interest against the deputy commissioner *(Sec. 21(b) [33 USCA Sec. 921 (b)]).*

From the foregoing, it is at once clear that the sole function of the Employees' Compensation Commission is to hear, determine and adjudge in the first instance, all matters coming within its jurisdiction, according to the proven facts and applicable law. Being of statutory origin, it needs no citation of authority to show that its powers, rights and duties are merely those which the statute has conferred upon it, and there is nothing in the Longshoremen's and Harbor Workers' Compensation Act which ex-

pressly or by necessary implication authorizes the commissioner to engage in litigation concerning the validity of its own decisions.

It is a well recognized principle of law that a court or an administrative board or agency exercising judicial or *quasi-judicial* functions can not interest itself in maintaining its determination and consequently can neither appeal from an order of the court reversing the proceedings nor be heard on appeal. *People ex rel Stuart v. Railroad Comm'rs. 160 N. Y. 202, 54 N. E. 697 (1899).*

This rule has been adopted in innumerable state decisions in which the question has been presented. In *Miles v. McKinney, 174 Md. 551, 564, 199 A. 540, 546, 117 A. L. R. 207, 214 (1938)* which involved the question as to the right of the Board of Zoning Appeals to appeal a judgment of the Baltimore City Court reversing its order, the Supreme Court of Maryland said:

> "Since therefore the Board is not a party to this proceeding, has no interest in it different from that which any judicial or quasi judicial agency would have, which is to decide the cases coming before it fairly and impartially, is in no sense aggrieved by the decision of the Baltimore City Court and has no statutory right of appeal, it had no power to take this appeal, and the appeal must be dismissed."

In *People v. Lawrence, 107 N. Y. 607, 609, 15 N. E. 187, 187-188 (1888)* the Court of Appeals of New York said:

> "The appellant is Abraham R. Lawrence, not as an individual, but in his judicial character as a justice of the Supreme Court. He was styled defendant in the

> court below in that character only, and the object of the proceedings . . . was to procure a reversal of an order made by him in his judicial capacity. We are unable to discover that he had an interest in maintaining the order or that it affects any right peculiar to himself."

The Supreme Court of Minnesota, adjudicating on a similar question in the case of *Kirchoff v. Board of Comm'rs of McLeod County, 189 Minn. 226, 227, 248 N. W. 817 (1933)* held:

> "The board is the tribunal designated by statute to hear the petition and pass upon it in the first instance. The litigants are the petitioner and the School districts affected. A court or tribunal before whom a controversy is litigated has as such, no appealable interest in the matter . . . Public boards and officers can not appeal or sue out writs of error, if they have no interest or are not aggrieved either in their official or individual capacity."

To the same effect are the cases of *McCarty v. Board of Supervisors, 61 Wis. 1, 20 N. W. 654 (1884); State v. Zoning Board of Appeal and Adjustment, 198 La. 758, 4 So. (2d) (1941); Pennsylvania Labor Relations Board v. Heinel Motors, 344 Pa. 238, 25 A. (2d) 306 (1942).*

In the last mentioned case the Supreme Court of Pennsylvania said:

> (344 Pa. 239, 25 A. (2d) 307): "Such a tribunal * * * quasi-judicial in character, intended to be impartial, given the power to hear and initially determine and adjudge, should not be able to convert itself into a litigant and become the partisan advocate

of one or the other of the parties whose cause it has heard. This would tend to destroy its quasi judicial character and its impartiality. Furthermore, to convert it into a party litigant would be to run counter to Pennsylvania's customs and traditions. Since Penn's frame of government for the commonwealth first established government by written limitations * * * it has been fundamental with us that judicial tribunals and quasi-judicial ones should be limited to hear and decide, not to espouse any party's cause at any state of proceedings. For the Board to become a litigant is repugnant to the traditional common law heritage of judicial detachment and freedom from interest."

We admit there are some administrative agencies, such as the Federal Trade Commission and the National Labor Relations Board, the functions of which are to execute some definite policy of Government, as the representative of the people. Consequently, they are not only permitted to participate in litigation affecting their own decisions, but are expressly required to do so as necessary and essential to the adequate protection of the interests of the government. In such cases Congress has, in unmistakable language, conferred upon these agencies the rights and duties of taking part in such litigation. Thus Section 5 of the Federal Trade Commission Act provides:

"The commission is hereby empowered and directed to prevent persons * * * from using unfair methods of competition * * *" *(15 USCA Sec. 45 (a).)*

"Whenever the Commission shall have reason to believe that any person * * * is using any unfair method * * * and if it shall appear to the commission *that a proceeding by it* in respect thereof would be

to the interest of the public, it shall issue and serve upon such person a complaint stating its charges * * *" *(15 USCA Sec. 45 (b)).*

Speaking of this section, the late Justice Brandeis said:

"Section 5 of the Federal Trade Commission Act does not provide private persons with an administrative remedy for private wrongs. The formal complaint is brought in the commission's name; the prosecution is wholly that of the government; and it bears the entire expense of the prosecution. A person who deems himself aggrieved by the use of an unfair method of competition is not given the right to institute before the commission a complaint against the alleged wrongdoer. Nor may the commission authorize him to do so. He may of course bring the matter to the commission's attention and request it to file a complaint. But a denial of his request is final * * *" *Federal Trade Commission v. Klesner, 280 U. S. 19, 25, 50 S. Ct. 1, 3, 74 L. Ed. 138 (1929).*

Again, in *Amalgamated Utility Workers v. Consol. Edison Co., 309 U. S. 261, 265, 60 S. Ct. 561, 563, 84 L. Ed. 738 (1940)* this Court discussed similar provisions in the Natoinal Labor Relations Act as follows:

"It is apparent that Congress has entrusted to the board exclusively the prosecution of the proceeding by its own complaint, the conduct of the hearing the adjudication and the granting of appropriate relief. The board as a public agency acting in the public interest, not any private person or group, not any employee or group of employees, is chosen as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce."

These boards exercise, therefore, the functions of both prosecutor and judge. *Federal Trade Commission v. Klesner, supra.* Such features, however, are conspicuously absent in the Longshoremen's and Harbor Workers' Compensation Act, and it is submitted that the enforcement of its provisions is not of such nature and does not embody such a public policy as would impliedly authorize the Commission to participate in litigation concerning the rights of private individuals. To permit the commissioner to appeal in this case would violate principles which have been long established by the courts of this country.

The Circuit Court of Appeals for the Fifth Circuit held that the commissioner, having been made a party defendant in the court below, had a right to take this appeal, and in support of this proposition cited and relied upon *Didier v. Crescent Wharf and Warehouse Company et al., 15 F. Supp. 91 (D. C. Cal., 1936),* in which the District Court of California held the commissioner was the necessary party defendant against whom an action to review his order under section 21(b) of the Act must be instituted. But it does not follow that because the commissioner is made a party defendant in the District Court he has a right to appeal from a judgment reversing his award. The answer lies in the fact that Section 21(b) of the Act merely prescribes a mode of procedure *to review the orders and awards* of compensation made by the deputy commissioner at the proceedings had before him, which is more in the nature of an appeal, and the mere fact Section 21(a) of the act requires the United States attorney to represent the Commission or its deputy commissioner "when either is a party to the case or interested, and to

represent such commission or deputy in any court in which such case may be carried on appeal" *(33 USCA Sec. 921(a))* does not, as stated by the Fifth Circuit Court of Appeals, necessarily mean that the commissioner shall be entitled to prosecute an appeal on his own motion from a judgment reversing his own decision. But it is perfectly consistent with the wording of this section of the Act, that the commissioner shall be represented by the United States attorney when, and in those instances in which, he is a party defendant under the provisions of section 21(b) of the Act *(33 USCA Sec. 921(b))*, or when the cause is carried to an appellate court either by the original claimant or by the employer or its insurance carrier.

We fail to see wherein the commissioner has been aggrieved by the judgment of the District Court either personally or in his judicial capacity. His interest in the proceedings is certainly not of a pecuniary nature; he stands to lose absolutely nothing; hence he is neither injured or benefited by the judgment appealed from. Furthermore, the claimant herein is not appealing. The appeal has been taken by the deputy commissioner in *sua persona*, not as an individual but in his judicial capacity, with the sole object of procuring a reversal of the judgment which, as far as it affects the claimant, has become final and binding.

Under the elementary principle of procedural law that no one can be permitted to appeal from a judgment unless he has a real, substantial and immediate interest in the subject matter of the litigation and that the right or title which the appellant seeks to establish must be his own

and not that of a third person, it is respectfully submitted that the appeal should have been dismissed.

II.

Question Raised by Appeal Was Moot.

This Court has consistently recognized that an appeal will not be entertained if it is shown that its only purpose is to secure a decision upon abstract questions of law. Thus, in *California v. San Pablo and T. R. Co., 149 U. S. 308, 314, 13 S. Ct. 876, 878, 37 L. Ed. 747 (1893),* it was said:

> "The duty of this court, as of every judicial tribunal, is limited to determining rights of persons or of property which are actually controverted in the particular case before it. When in determining such rights it becomes necessary to give an opinion upon a question of law, that opinion may have precedent for future decisions. But the court is not empowered to decide moot questions or abstract propositions, or to declare for the government of future cases, principles or rules of law which can not affect the result as to the thing in issue in the case before it."

This rule has been consistently applied by this Court in innumerable instances and under diverse circumstances. Thus, in *Mills v. Green, 159 U. S. 651, 16 S. Ct. 132, 40 L. Ed. 293 (1895)* an appeal from a decree dismissing an action to secure a right to vote at an election, was dismissed on motion showing that the election had already taken place. Similarly, in *Wingert v. First National Bank 223 U. S. 670, 32 S. Ct. 391, 56 L. Ed. 605 (1912)* an appeal from a judgment refusing an injunction to prohibit the

defendant from erecting a new bank building, was dismissed upon a showing that the new structure had been completed in the interim.

In *United States v. Hamburg-American S. S. Company, 239 U. S. 466, 36 S. Ct. 212, 60 L. Ed. 387 (1916)*, a combination of American and German steamship lines was attacked as illegal under the antitrust act of 1890. In dismissing an appeal by the plaintiff, the court held that since the business in which the parties to the combination were engaged had terminated in the interim, and that since any continued relation between them was unlawful owing to the World War, all questions respecting the validity of the combination had become moot and beyond the power of the court to determine.

Under these principles, it is now established that an appeal will be dismissed upon a showing that the appeal has been withdrawn, or that the right to appeal has been abandoned, or where it is shown that the parties have entered into a stipulation, based upon sufficient consideration, that no appeal shall be taken from the decree of the trial court. *Addington v. Burke, 125 U. S. 693, 8 S. Ct. 1391, 31 L. Ed. 853 (1887); Elwell v. Fosdic, 134 U. S. 500, 10 S. Ct. 598, 33 L. Ed. 998 (1890); County of Dakota v. Glidden, 113 U. S. 222, 5 S. Ct. 428, 28 L. Ed. 981 (1885); U. S. Consol. Seeded Raisin Co. v. Chaddock & Co., 173 F. 577, 97 C. C. A. 527, 19 Ann. Cas. 1054 (1909).* And the mere fact the questions involved are of great importance and identical with those presented in other cases, is not an inducement to the court to take cognizance of the ap-

peal. As was said by this Court in *Little v. Bowers, 134 U. S. 547, 558, 10 S. Ct. 620, 623, 33 L. Ed. 1016 (1890):*

> "If as is contended on behalf of the plaintiff in error, the question involved in this case is one of great importance to the railroad company and to the state, and is identical with that in a number of other cases pending in the court below, so much more important is it that it should not be decided in a case where there is nothing in dispute."

The Circuit Court of Appeals held, however, that the withdrawal and abandonment of the claim by the claimant did not render the question moot because the compromise agreement was illegal under the provisions of Sections 15(b) and 16 of the Act. *(33 USCA Secs. 915(b), 916).* But the question before the Court was not the validity *vel non* of the compromise agreement. This question may have arisen in the event the claimant had appealed from the judgment sought to be reversed. By not appealing, and by electing to withdraw from the litigation and abide by the judgment of the District Court, claimant is bound thereby. *Hartford Accident & Indemnity Co., v. Bunn, 285 U. S. 169, 52 S. Ct. 354, 76 L. Ed. 685 (1932).* Moreover, the reversal of the judgment could not possibly have inured to the benefit of the claimant since a reversal on appeal benefits only those who have appealed. *Hartford Accident & Indemnity Co. v. Bunn, supra.*

It follows, therefore, that the question as to the validity *vel non* of the compromise agreement was likewise academic and not before the Court for determination. It is clear that sections 15(b) and 16 were enacted solely for the benefit of claimants and consequently, the validity of

the compromise can be adjudicated upon at such time as, and only in the event that the claimant herein seeks to question its validity. This will clearly appear from the authorities cited by the Circuit Court of Appeals in support of its decision, namely, *Lumber Mutual Insurance Co. v. Locke 60 F. (2d) 35 (C. C. A. 2d. 1932); Great Lakes Dredge and Dock Company v. Brown, 47 F. (2d) 265 (D. C. Ill., 1930); Southern Steamship Company v. Sheppeard, 34 F. (2d) 959 (D. C. Tex., 1929).*

In *Lumber Mutual Insurance Co. v. Locke, supra,* the claimant had made a "full settlement of all past, present and future claims". Thereafter he repudiated his compromise and instituted proceedings for compensation. The employer's defense that the action was barred by the settlement was properly held insufficient in view of Section 16 of the Act. A similar situation was presented in the *Great Lakes Company* case, *supra.* But it must be noted, that in these cases, the claimant himself was seeking to avoid the compromise. In *Southern Steamship Company v. Sheppeard, supra,* an employer sued to enjoin an award made by the commissioner on the grounds that a compromise had been previously effected between the employer and the claimant. The proceedings had been instituted by the commissioner of his own motion, and the claimant was in no wise interested in a further award, as is the case here. The question presented was whether or not Section 16 of the Act which declared the release and compromise null was constitutional. The Court held:

> (34 F. (2d) 961): "I am of the opinion that the matter is not before me to decide, for here is a proceeding initiated by the Commissioner sua sponte to

which Cummings is, as far as the record shows, a mere bystanding party, having no interest in the outcome, and himself in no manner bringing or prosecuting the claim. Under the undisputed facts, the agreement aside, there is no error whatever in the action of the commissioner and his award under the statute, being wholly in accordance with law, cannot in this proceeding be enjoined, whatever may be the law as to whether plaintiff under different pleadings and in a different form of action could obtain relief against the award in the event the beneficiary of it should seek to enforce it. In short * * * until the plaintiff (sic. claimant) seeks to proceed under the award or to claim the benefits of it, the question of whether it is valid and enforceable will not arise * * *"

"The present pleading showing no effort on the part of the employee to obtain or enforce the award, the QUESTION IS ACADEMIC AS TO WHETHER THE EXISTENCE OF THE AGREEMENT WOULD PREVENT ITS COLLECTION IF HE TRIED TO DO SO." (Emphasis and parenthesis supplied.)

The mere possibility that the claimant in this case will seek to enforce the award of the commissioner thus bringing up for consideration the validity of the agreement, does not alter the situation. In *United States v. Hamburg-American S. S. Co., supra* it was contended that in view of the possibility that on the cessation of war between the United States and Germany, the parties to the alleged illegal combination would resume their activities, and that, therefore, the court should decide the controversy to prevent future attempts at a renewal of the combination. This suggestion was flatly rejected, the court stating:

"But this, merely upon a prophecy as to future conditions, invokes the exercise of judicial power not to

decide an existing controversy, but to establish a rule for controlling predicted future conduct, contrary to the elementary principle * * * stated in California v. San Pablo T. R. Co."

United States v. Hamburg-American S. S. Co., 239 U. S. 466, 475, 36 S. Ct. 212, 216, 60 L. Ed. 387 (1916).

See also, *Goodyear Tire & Rubber Co. v. Federal Trade Commission, 92 F. (2d) 677 (Reversed on other grounds, 304 U. S. 257, 58 S. Ct. 863, 82 L. Ed. 1326 (1938).)*

It is, therefore, respectfully submitted, that the questions presented by the appeal had become moot since this was a proceeding initiated by the Commissioner himself, to which the real party to the original suit was a mere bystander having no additional interest whatever in the outcome of the case, as is shown by the record, and who was in no way further prosecuting the claim, In short, there was nothing before the Court for adjudication, and since a reversal of the judgment would have been of no effect, the appeal should have been dismissed.

III.

The Order Was Invalid Because Rendered Contradictorily With An Unrepresented Minor.

Section 19 of the Statute provides that an order may be made only after hearings had contradictorily with all parties in interest, *(33 USCA Sec. 919)*. Section 21(b) provides that a compensation order may be suspended or set aside "if not in accordance with law." *(33 USCA Sec. 921(b).)* It follows, therefore that an order rendered

in favor of or against a person not legally before the commissioner is not "in accordance with law" and may be set aside or suspended.

The record shows the award herein complained of grew out of a proceeding had contradictorily with an unrepresented minor. In other words, the deputy commissioner proceeded to determine petitioner's liability for compensation contradictorily with said minor as though she was a person *"sui juris"*, contrary to law. In support of his action the commissioner relied on section 9(b) of the Act, his contention being that it is discretionary with him to require the appointment of a guardian. This section, as well as section 8(d) of the Act, merely state the *quantum* which shall be paid and does not purport to provide the procedure to be followed at hearings before the commissioner. It is true that both sections authorize the commissioner and make it discretionary with him to appoint a guardian for a minor; but this only for the purpose of receiving the compensation to which the minor may be entitled thereunder. This is clear from a careful reading of these sections which we quote merely for the convenience of the Court.

> "Any compensation (for disability) to which any claimant would be entitled * * * shall * * * be payable to and for the benefit of the persons following:
>
> * * * *
>
> "If there be a surviving wife or dependent husband *and surviving children* of the deceased * * * one-half shall be payable to the surviving wife or dependent husband and the other half to the surviving child or children.

> "The Deputy Commissioner may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child." *(33 USCA Sec. 908 (d).)*

Likewise, section 9 (b) merely states that in case the injury causes death, compensation shall be payable to the surviving wife and surviving child or children, if any, in which case, the commissioner may also require the appointment of a guardian for the purpose of receiving the compensation of minor children. *(33 USCA Sec. 909(b).)* It is clear therefore that the purpose for the requirement that a tutor be appointed, is merely for receiving the compensation to which under the act, a minor might be entitled, but *ONLY AFTER AN AWARD HAS BEEN MADE ACCORDING TO LAW AND CONTRADICTORILY WITH ALL PARTIES IN INTEREST.*

It is significant that under section 9 (c) which provides for the *quantum* to be paid to minor children in default of a surviving spouse, nothing is said regarding the appointment of a guardian or tutor, the inference being that a tutor will already have been appointed to represent the minor at the hearings *(33 USCA Sec. 909 (c))*. It may well be argued, therefore, that the sections which do authorize the commissioner to appoint a guardian in his discretion are intended to apply only to a case wherein an award has been made contradictorily with the surviving parent and in which proceeding a certain percentage of the award is payable to a minor child either personally, or through a guardian appointed for that purpose.

There is nothing in the Longshoremen's and Harbor Workers' Compensation Act authorizing the commissioner to hold hearings contradictorily with persons who are not *sui juris*. On the contrary, it is impliedly stated in section 13 (c) that the appointment of a representative to minors and incompetents is a prerequisite to the validity of an order. This section provides:

> "If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of subdivision (a) (providing for the time within which claims must be filed) shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of a guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age." *(33 USCA Sec. 913 (c)).*

Applying the above quoted section to the question as to whether a minor's right to claim compensation was barred by the failure of his mother to file the claim within the time prescribed by law, the Fifth Circuit Court of Appeals held that since the minor had not an authorized representative capable of representing his rights in the premises, the action was not prescribed. *Maryland Casualty Company v. Lawson, 110 F. (2d) 269, 270 (C. C. A. 5th, 1940).* The Court said:

> "Section 13 (913) in speaking of the absence of 'a guardian or other authorized person' does not contemplate the recognition or authority which proceeds from the Deputy Commissioner, but that authority

> which the law of the claimant's domicile or of the place of the occurrence of the compensable injury vests in some person as the guardian or like representative of the minor or incompetent. The compensation is a property right, generally to be used in the support of the dependent claimant, and someone authorized by law to collect and expend it is contemplated * * * The minor must, before being barred, for a year have had an authorized and responsible representative capable of and bound to represent his rights in the premises."

A similar question was decided in *Hoage v. Terminal Refrigerating and Warehousing Co., 78 F. (2d) 1009 (1935)* in which the Court of Appeals for the District of Columbia held that a suit to enjoin an award in favor of an incompetent on the grounds that his claim had been previously rejected was not *res judicata*, since the minor had not been represented at the prior hearings. The Court said:

> (72 F. (2d) p. 1011): "It appears that from the time of his injury up to the time of the appointment of his present committee the employee was not represented in these proceedings by any guardian or other representative. Therefore, in contemplation of law, the employee if mentally incompetent was not a party in the proceedings had under the respective claims for compensation filed with the Deputy Commissioner in his name * * *"
>
> "If the employee was non compos mentis at the time when these (proceedings) were had and the rejections were made, and was not represented by a guardian or other representative the rejections would not have the effect of a lawful adjudication of the rights of the employee."

If, therefore, a minor or an incompetent is not a party to the proceedings and a lawful adjudication of his rights can not be made unless he is properly represented, it follows that an order, whether rejecting or allowing his claim, is not in accordance with law. See also *Weyerhauser Timber Co. v. Marshall, 102 F. (2d) 78 (C. C. A. 9th, 1939)* wherein a guardian *ad litem* to the minor was appointed to represent the minor at the hearings before the commissioner.

Under the New York Workmen's Compensation Law, as set out in McKinney's Consolidated Laws, Secs. 28 and 115, from which the above quoted sections of the Longshoremen's Act were taken, it is held that it is the guardian or next of friend of minors or incompetents who must file the claims for compensation. *Grillo v. Sherman-Stalter Co., 195 App. Div. 302, 186 N. Y. S. 810 (1921).* See also *Decker v. Pouvailsmith Corporation, 252 N. Y. 1, 168 N. E. 442 (1929); Hanke v. N. Y. Consolidated R. Co., 181 App. Div. 53, 168 N. Y. S. 234 (1917).* The Supreme Court of Illinois, in a case involving the procedure before the Industrial Commission of that state for compensation of a minor arising out of the death of his father, correctly held that a minor could not commence or engage in a legal proceeding in his own name, but must appeal, if at all, by a representative such as a guardian or next of friend. *Waechter v. Industrial Commission, 367 Ill., 256, 11 N. E. (2d) 378 (1937).*

Under the law of Louisiana, minors do not have sufficient capacity to sue, and any action brought to enforce a right belonging to a minor not emancipated, must be in-

stituted by the representative designated by law to administer his estate, the proper party plaintiff being the representative and not the party represented. *(Arts. 108, 109, La. Code of Practice of 1870.)*

It is respectfully submitted, therefore, and we urge this court to hold, that the existence of a properly qualified representative for the claimant herein was impliedly required, if not expressly so, and that, therefore, the proceedings had before the commissioner were "not in accordance with law".

SUMMARY OF ARGUMENT.

In the foregoing we have shown that the Deputy Commissioner was not a proper party appellant in this case. We base our position on the principles, long established by jurisprudence, that administrative bodies, such as the United States Employees' Compensation Commission, are prohibited from engaging in litigation concerning their own decisions, and consequently have no right of appeal therefrom, in the absence of specific statutory authority.

We have also shown, that the question had become moot by reason of the claimant's withdrawal and abandonment of her claim and that consequently, there was nothing before the court for adjudication.

We have also shown the Order, Award of Compensation rendered by the Deputy Commissioner was contrary to law as having been rendered contradictorily with an unrepre-

sented minor. The decision of the Circuit Court of Appeals herein is not only contrary to the law, as announced by this Court, but also contrary to the sound principles of established jurisprudence in this country.

That the questions which this application suggests should be definitely settled by this Court is apparent.

Respectfully submitted.
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